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7 Attorneys for Defendants
BANK OF NEW YORK TRUST COMPANY, N.A., as successor Trustee to JPMorgan Chase
8 Bank, as original Trustee for the MERRILL LYNCH MORTGAGE INVESTORS SURF
TRUST SERIES 2005-ABI; BANK OF AMERICA, N.A., as successor by merger to BAC
9 HOME LOANS SERVICING, LP; RECONTRUST COMPANY, N.A.; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC.

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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 MUHAMED ALMUTARREB and SOPHIA
15 ALMUTARREB,

16 Plaintiffs,

17 vs.

18 BANK OF NEW YORK TRUST COMPANY,
N.A., as successor Trustee to JPMORGAN
19 CHASE BANK, as original Trustee for the
MERRILL LYNCH MORTGAGE
20 INVESTORS SURF TRUST SERIES 2005-
AB1; BAC HOME LOAN SERVICING, LP;
21 RECONTRUST COMPANY, N.A.,
MORTGAGE ELECTRONIC
22 REGISTRATION SYSTEMS; AND DOES 1-
100, INCLUSIVE,

23 Defendants
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Case No. C12-03061-EMC

Judge: The Hon. Edward M. Chen

**STIPULATION TO CONTINUE THE
HEARING ON DEFENDANTS'
MOTION TO DISMISS AND STRIKE
PLAINTIFFS' FIRST AMENDED
COMPLAINT AND CASE
MANAGEMENT CONFERENCE;
[PROPOSED] ORDER**

Date Action Filed: June 14, 2012
Trial Date: None set.

TO THE COURT IN THE ABOVE ENTITLED ACTION:

Defendants Bank of New York Trust Company, N.A., as successor Trustee to JPMorgan Chase Bank, as original Trustee for the Merrill Lynch Mortgage Investors Surf Trust Series 2005-ABI; Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP; Recontrust Company, N.A.; Mortgage Electronic Registration Systems, Inc., and Plaintiffs Muhamed Almutarreb and Sophia Almutarreb (collectively “Parties”) by and through their counsel of record, hereby enter into the following stipulation to continue the Case Management Conference and the hearing on Defendants’ Motion to Dismiss and Strike the First Amended Complaint.

WHEREAS, On June 14, 2012 Plaintiffs Muhamed Almutarreb and Sophia Almutarreb (“Plaintiffs”) filed a complaint against Defendants Bank of New York Trust Company, N.A., as successor Trustee to JPMorgan Chase Bank, as original Trustee for the Merrill Lynch Mortgage Investors Surf Trust Series 2005-ABI; Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP; Recontrust Company, N.A.; Mortgage Electronic Registration Systems, Inc. (“Defendants”).

WHEREAS, On July 16, 2012, Defendants filed a Motion to Dismiss Plaintiffs’ Complaint, pursuant to Federal Rules of Civil Procedure 12(b)(6). The Motion to Dismiss was scheduled to be heard on September 28, 2012. However, on September 24, 2012 the Court determined that the matters were appropriate for resolution without oral argument and vacated the hearing, pursuant to Civil Local Rule 7-1(b). The Court denied Defendants’ Motion to Dismiss as to Plaintiffs’ claim under Civil Code §2923.5 and Granted with prejudice as to all remaining claims except for claims for violation of FDCPA, RESPA, Quiet Title, Wrongful Foreclosure under Civil Code §2923.6 and Accounting, which were dismissed with prejudice. The Court granted Plaintiffs leave to amend the remaining causes of action for declaratory relief, negligence,

1 quasi contract, wrongful foreclosure, violation of California Business and Professions Code §
2 17200, and fraud.

3 WHEREAS, Plaintiffs filed a First Amended Complaint on November 7, 2012.

4 WHEREAS, on November 28, 2012, Defendants filed and served an Answer to the Civil
5 Code §2923.5 claim, a Motion to Dismiss the First Amended Complaint, and a Motion to Strike
6 the First Amended Complaint.

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8 WHEREAS, The initial Case Management Conference (“CMC”) is currently scheduled for
9 hearing in this Court on January 3, 2013 at 1:30 p.m.

10 WHEREAS, Defendants’ Motion to Dismiss and Motion to Strike the First Amended
11 Complaint is currently scheduled for hearing in this Court on January 3, 2013 at 1:30 p.m.

12 WHEREAS, Good cause exists to continue the CMC and the hearing on Defendants’
13 Motion to Dismiss and Motion to Strike the First Amended Complaint because of a conflict with
14 Plaintiffs’ counsel’s schedule. Counsel for Plaintiffs recently became aware of this scheduling
15 conflict and notified Counsel for Defendants on December 11, 2012.

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1 WHEREFORE, the Parties, by and through their respective counsel of record, hereby agree
 2 and request this Court to continue the CMC and the hearing on Defendants' Motion to Dismiss
 3 and Motion to Strike the First Amended Complaint, for an additional 21 to 28 days, or to a date
 4 that is convenient for the Court. A Joint Case Management Statement will be filed seven (7) days
 5 before the date of the continued CMC.
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7 **IT IS SO STIPULATED.**
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9 Dated: December 11, 2012

BRYAN CAVE LLP

10
 11 By: /s/ Michelle M. Cammarata
 12 Michelle M. Cammarata
 13 Attorney for Defendants
 14 Attorneys for Defendants BANK OF NEW
 15 YORK TRUST COMPANY, N.A., as
 16 successor Trustee to JPMorgan Chase Bank,
 17 as original Trustee for the MERRILL
 18 LYNCH MORTGAGE INVESTORS SURF
 19 TRUST SERIES 2005-ABI; BANK OF
 20 AMERICA, N.A., as successor by merger to
 21 BAC HOME LOANS SERVICING, LP;
 22 RECONTRUST COMPANY, N.A.;
 23 MORTGAGE ELECTRONIC
 24 REGISTRATION SYSTEMS, INC.

19 Dated: December 11, 2012

LAW OFFICE OF JASON ESTAVILLO

21 By: /s/ Jason W. Estavillo
 22 Jason W. Estavillo
 23 Attorney for Plaintiffs
 24 Muhamed and Sophia Almutarreb
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BRYAN CAVE LLP
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 SAN FRANCISCO, CA 94105

[PROPOSED] ORDER

Having reviewed the above stipulation of Defendants Bank of New York Trust Company, N.A., as successor Trustee to JPMorgan Chase Bank, as original Trustee for the Merrill Lynch Mortgage Investors Surf Trust Series 2005-ABI; Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP; ReconTrust Company, N.A.; Mortgage Electronic Registration Systems, Inc. ("Defendants"), and Plaintiffs Muhamed Almutarreb and Sophia Almutarreb ("Plaintiffs") and good cause appearing therefore, the Case Management Conference and the hearing on Defendants' Motion to Dismiss and Motion to Strike the First Amended Complaint, scheduled for January 3, 2013, is hereby continued to January 31, 2013 at 1:30 ~~a.m.~~/p.m.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 12/12/12

Honorable J. _____
United States

